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EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

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MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 30th September 1961

**S.O. 2386.**—In pursuance of sub-section (7) of Section 45 of the Banking Companies Act, 1949 (10 of 1949), the Central Government hereby specifies the 7th October, 1961 as the prescribed date in relation to the scheme for the amalgamation of the Phaltan Bank Ltd., with the Sangli Bank Ltd., which has been sanctioned by the Central Government under the provisions of the said sub-section.

[No. F. 4(152)-BC/61(i).]

**S.O. 2387.**—Whereas on the application of the Reserve Bank of India under sub-section (1) of section 45 of the Banking Companies Act, 1949 (10 of 1949), the Central Government has made an order of moratorium in respect of the Phaltan Bank Ltd., Phaltan under sub-section (2) of the said section.

AND WHEREAS the Reserve Bank of India in exercise of the powers conferred by sub-section (4) of Section 45 of the said Act has prepared a scheme for the amalgamation of the Phaltan Bank Ltd., Phaltan with the Sangli Bank Ltd., Sangli.

AND WHEREAS the Reserve Bank after having sent the said scheme in draft to the banking companies concerned in accordance with the provisions of sub-section (6) of the said section and after having considered the suggestions and objections received in regard to the said scheme has modified that scheme and forwarded it to the Central Government for sanction.

NOW, therefore, in exercise of the powers conferred by sub-section (7) of section 45 of the said Act, the Central Government hereby sanctions the scheme on and subject to the terms and conditions hereinafter mentioned.

(1) The Phaltan Bank Ltd., shall be the transferor bank and the Sangli Bank Ltd., shall be the transferee bank.

(2) As from the date which the Central Government may specify for this purpose under sub-section (7) of section 45 of the said Act (hereinafter referred to as the prescribed date) all rights, powers, claims, demands, interests, authorities, privileges, benefits, assets and properties of the transferor bank, movable and immovable, including premises subject to all incidents of tenure and to the rents and other sums of money and covenants reserved by or contained in the leases or agreements under which they are held, all office furniture, loose equipment, plant, apparatus and appliances, hooks, papers, stocks of stationery, other stocks and stores, all investments in stocks, shares and securities, all bills receivable in hand and in transit, all cash in hand and on current or deposit account (including money at call or short notice) with banks, bullion, all book debts, mortgage debts and other

debts with the benefit of securities, or any guarantee therefor, all other, if any, property rights and assets of every description including all rights of action and benefit of all guarantees in connection with the business of the transferor bank shall, subject to the other provisions of this scheme stand, transferred to, and become the properties and assets of, the transferee bank; and as from the prescribed date all the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities, duties and obligations of the transferee bank to the extent and in the manner provided hereinafter.

Without prejudice to the generality of the foregoing provisions, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the prescribed date shall be effective to the extent and in the manner hereinafter provided against or in favour of the transferee bank and may be acted upon as if instead of the transferor bank the transferee bank had been a party thereto or as if they had been issued in favour of the transferee bank.

If on the prescribed date any suit, appeal or other legal proceeding of whatever nature by or against the transferor bank is pending, the same shall not abate, or be discontinued or be in any way prejudicially affected, but shall, subject to the other provisions of this scheme, be prosecuted and enforced by or against the transferee bank.

If according to the laws of any country outside India the provisions of this scheme, by themselves, are not effective to transfer or vest any asset or liability situated in that country which forms part of the undertaking of the transferor bank to or in the transferee bank, the affairs of the transferor bank in relation to such asset or liability shall, on the prescribed date, stand entrusted to the chief executive officer for the time being of the transferee bank and the chief executive officer may exercise all powers and do all such acts and things as would have been exercised or done by the transferor bank for the purpose of effectively winding-up its affairs. The Chief executive officer shall take all such steps as may be required by the laws of any such country outside India for the purpose of effecting such transfer or vesting and in connection therewith the chief executive officer may, either himself or through any person authorised by him in this behalf, realise any asset or discharge any liability of the transferor bank and transfer the net proceeds thereof to the transferee bank.

(3) The books of the transferor bank shall be closed and balanced and balance sheet prepared in the first instance as at the close of business on the 6th September, 1961, and thereafter as at the close of the business on the day immediately preceding the prescribed date and the balance sheets shall be got audited and certified by a chartered accountant or a firm of chartered accountants approved or nominated by the Reserve Bank of India for the purpose.

A copy each of the balance sheets of the transferor bank prepared in accordance with the provisions of the foregoing paragraph, shall be filed by the transferor bank with the Registrar of Companies as soon as possible after it has been received and thereafter the transferor bank shall not be required to prepare balance sheets or profit and loss accounts, or to lay the same before its members or file copies thereof with the Registrar of Companies.

(4) I. The transferee bank shall in consultation with the transferor bank, value the property and assets and reckon the liabilities of the transferor bank in accordance with the following provisions, namely,

- (a) Investments including Government securities shall be valued at the market rates prevailing on the day immediately preceding the prescribed date provided that the securities of the Central Government such as Post Office Certificates, Treasury Savings Deposit Certificates and any other securities or certificates issued under the small savings scheme of the Central Government shall be valued at their face value or the encashable value as on the said date, whichever is higher.
- (b) Where the market value of any Government security such as the Zamin-dari abolition bonds or other similar security in respect of which the principal is payable in instalments is not ascertainable or is, for any reason, not considered as reflecting the fair value thereof or as otherwise appropriate, the security shall be valued at such an amount as is considered reasonable having regard to the instalments of principal and

interest remaining to be paid, the period during which such instalments are payable, the yield of any security issued by the Government to which the security pertains and having the same or approximately the same maturity, and other relevant factors.

- (c) Where the market value of any security share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its average market value over any reasonable period.
- (d) Where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable, having regard to the financial position of the issuing concern, the dividends paid by it during the preceding five years and other relevant factors.
- (e) Premises and all other immovable properties and any assets acquired in satisfaction of claims shall be valued at their market value.
- (f) Furniture and fixtures, stationery in stock and other assets, if any, shall be valued at the written down value as per books or the realisable value as may be considered reasonable.
- (g) Advances including bills purchased and discounted, book debts and sundry assets, will be scrutinised by the transferee bank and the securities, including guarantees, held as cover therefor examined and verified by the transferee bank. Thereafter, the advances including portions thereof, will be classified into two categories, namely "Advances considered good and readily realisable" and "Advances considered not readily realisable and/or bad or doubtful of recovery".

II. Liabilities for purposes of this scheme shall include all contingent liabilities which the transferee bank may reasonably be expected or required to meet out of its own resources on or after the prescribed date.

III. Where the valuation of any asset cannot be determined on the prescribed date, it may, with the approval of the Reserve Bank of India be treated partly or wholly as an asset realisable at a later date.

In the event of any disagreement between the transferee bank and the transferor bank as regards the valuation of any asset or the classification of any advance or the determination of any liability, the matter shall be referred to the Reserve Bank of India, whose opinion shall be final, provided that until such an opinion is received, the valuation of the item or portion thereof by the transferee bank shall provisionally be adopted for the purpose of this scheme.

It shall be competent for the Reserve Bank in the event of its becoming necessary to do so, to obtain such technical advice as it may consider to be appropriate in connection with the valuation of any such item of asset or determination of any such item of liability, and the cost of obtaining such advice shall be payable in full out of the assets of the transferor bank.

The valuation of the assets and the determination of the liabilities in accordance with the foregoing provisions shall be binding on both the banks and the members and creditors thereof.

(5) In consideration of the transfer of the property and the assets of the transferor bank to the transferee bank the transferee bank shall discharge the liabilities of the transferor bank to the extent mentioned in this and the succeeding paragraphs.

- (a) The outside liabilities other than deposits as on the prescribed date shall be paid or provided for in full.
- (b) In respect of every savings bank account or current account or any other deposit including a fixed deposit, cash certificate, monthly deposit, deposit payable at call or short notice or any other deposit by whatever name called with the transferor bank, including interest to the extent payable under this scheme, the transferee bank shall open with itself on the prescribed date a corresponding and similar account in

the name of the respective holder(s) thereof with a balance equal to the amount or the sum total of the amounts mentioned below, namely,

- (i) in the first place a sum of two hundred and fifty rupees or the balance in the account whichever may be less, less the amount, if any, paid during the period of moratorium, provided that the sum total of the amounts credited in terms of this sub-clause in respect of the accounts standing in the name of any one person, and not jointly with that of any other person, shall not exceed two hundred and fifty rupees, less the amount, if any, paid during the period of moratorium;
- (ii) in the next place the *pro rata* share available in respect of each of the accounts out of the assets referred to in paragraph (4) as valued for the purposes of this scheme, excluding the advances considered not readily realisable and/or bad or doubtful of recovery and any asset or portion of an asset not valued on the prescribed date, after deducting therefrom the amount needed for the payments or provisions mentioned at clause (a) and sub-clause (i) of clause (b) above.

*Explanation.*—The term ‘*pro rata*’ occurring in this paragraph and elsewhere in this scheme shall mean ‘in proportion to the respective amounts remaining due at the time of the payment or distribution’.

- (c) On the prescribed date, the entire amount of the paid-up capital and reserves of the transferor bank shall be treated as provision for bad and doubtful debts and depreciation in other assets of the transferor bank and the rights of the members of the transferor bank shall, in relation to the transferee bank, be as provided for in paragraph (6) below.

(6) In respect of—

- (a) every account mentioned in clause (b) of the preceding paragraph, the balance in the account, if any, remaining uncredited in terms of sub-clauses (i) and (ii) of that clause; and
- (b) every share in the transferor bank, the amount which was treated as paid-up towards share capital by or on behalf of each shareholder immediately before the prescribed date and/or the amount paid on account of the calls made by the transferee bank in pursuance of clause (i) below

shall be treated as a collection account and shall be entered as such on the books of the transferee bank and payments against the account shall be made in the following manner, namely,

- (i) the transferee bank may, if it so considers necessary, call upon every person who on the prescribed date was registered as the holder of a share in the transferor bank (or who would have been entitled to be so registered) to pay within three months from such date as may be specified, the uncalled amount remaining unpaid by him in respect of such shares and the calls in arrears, if any, and the transferee bank shall take all available steps having regard to the circumstances of each case to demand and enforce the payment of the amounts due under this clause, together with interest at six per cent per annum for the period of the default;
- (ii) the transferee bank, shall in respect of the advances, bills purchased and discounted, book debts and sundry debts and other assets, which are classified as “Advances considered not readily realisable and/or bad or doubtful of recovery”, or which are or may be realisable wholly or partly after the prescribed date in terms of paragraph (4) above, take all available steps having regard to the circumstances of each case to demand and enforce or obtain payment, provided, however, that if the amount of the debt exceeds Rs. 5,000, the transferee bank shall not except with the approval of the Reserve Bank of India:
  - (a) enter into a compromise or arrangement with the debtor or any other person,
  - (b) sell or otherwise dispose of any securities transferred to it;
- (iii) the transferee bank shall in addition take all available steps having regard to the circumstances of each case to demand and enforce the payment of the amounts, if any, awarded as damages by the High Court against any promoter, director, manager or other officer of the

transferor bank under section 45L of the Banking Companies Act read with section 45H thereof and also with section 543 of the Companies Act, 1956;

- (iv) The transferee bank may, out of the realisations effected by it on account of the items mentioned in clauses (i), (ii) and (iii) above, make payment or provision in respect of any contingent liability to the extent that the provision made therefor under paragraph (5)(a) proves inadequate, as also, with the prior approval of the Reserve Bank, in respect of any liability which was not assessed in terms of paragraph (4) above and has arisen or been discovered on or after the prescribed date.
- (v) the transferee bank shall, at such periodical intervals as may be possible or convenient, make out of the realisations effected by it on account of the items mentioned in clauses (i), (ii) and (iii) above, after deducting therefrom the expenditure incurred for the purpose and the amount appropriated therefrom in terms of clause (iv) above, or out of the balance, if any, which may be available from out of the contingent liabilities as reckoned for the purposes of this scheme after the extent of such liabilities has been finally ascertained, payments *pro rata* in the manner and to the extent specified below:
- (a) in the first place the amounts due to the collection accounts of the depositors of the transferor bank till payment in full against all the accounts has been made; and thereafter
- (b) in the next place the amounts, if any, due to the accounts of the former shareholders of the transferor bank.

Provided that the transferee bank shall make the payments referred to in sub-clause (a) above,

- (i) if the corresponding or similar account mentioned in clause (b) of paragraph 5 has not been closed or has not matured for payment, by credit to that account; and
- (ii) if the said account has been closed or has matured for payment, in cash.

Provided further that the transferee bank shall give to any person to whom any payment may be due against in account mentioned in sub-clause (b) above such reasonable notice not exceeding three months and not being less than one month, as it may consider appropriate, of the payment being due, and

- (a) if during the period of this notice a request has not been received in writing for the payment of the amount due in cash and if the amount of the payment due is also not less than the highest closing price of an ordinary share in the transferee bank as quoted on any recognised stock exchange on or immediately before the date on which the notice is issued or where the ordinary share of the transferee bank is not quoted on any recognised stock exchange the price of the share as determined by the Reserve Bank, the transferee bank shall allot to the payee a share or shares in the transferee bank to the extent possible and disburse in cash the balance, if any, of the amount which may be due; and
- (b) if the conditions mentioned in sub-clause (a) above are not fulfilled the transferee bank shall disburse the amount in cash.

Provided further that:

- (a) the allotment of the shares or the payments aforesaid shall in each case be made before the end of six months from the date on which notice of the payment falling due is deemed to have been served in accordance with the provisions of this scheme, and
- (b) the share capital of the transferee bank shall be deemed to have been increased and it shall also be lawful for the transferee bank to issue the shares in the manner and to the extent specified for the purposes of this scheme.

(vi) the amounts due to the collection accounts referred to in this paragraph shall be deemed to be a liability of the transferee bank only to the extent provided for in this scheme.

(vii) on the expiry of twelve years from the prescribed date or such earlier period as the Central Government after consulting the Reserve Bank of India may specify for this purpose, any item referred to in clause (ii) of this paragraph which may not have been realised by that date shall be valued by the transferee bank in consultation with the Reserve Bank and the transferee bank shall distribute any amount or amounts determined in the light of that valuation, after deducting therefrom any sum necessary for meeting the liabilities referred to in clause (iv) of this paragraph which may remain unsatisfied as on that date, to the depositors and shareholders in the order and in the manner provided for in clause (v) of this paragraph.

(7) Notwithstanding anything to the contrary contained in any contract, express or implied, no interest shall accrue on account of a deposit or other liability in any account mentioned in paragraphs (5) and (6) after the date of the moratorium and interest shall be paid only in respect of the new accounts opened with the transferee bank in terms of paragraph (5) and credited in accordance with the provisions of that or the next succeeding paragraph and only at such rates as the transferee bank may allow.

(8) No depositor or other creditor of the transferor bank shall be entitled to make any demand against the transferor bank or the transferee bank in respect of any liability of the transferor bank to him except to the extent prescribed by this scheme.

(9) No suit or other legal proceedings shall lie against the Central Government the Reserve Bank of India or the transferee or the transferor bank for anything which is in good faith done or intended to be done in pursuance of this scheme.

(10) All the employees of the transferor bank shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the 7th September 1961:

Provided that the employees of the transferor bank who have, by notice in writing given to the transferor or the transferee bank at any time before the expiry of one month next following the date on which this scheme has been sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee bank, shall be entitled to the payment of such compensation, if any, under the provisions of the Industrial Disputes Act, 1947 and such pension, gratuity, provident fund and other retirement benefits as may be ordinarily admissible under the rules or authorisations of the transferor bank immediately before the 7th September 1961:

Provided further that the transferee bank shall in respect of the employees of the transferor bank who are deemed to have been appointed as employees of the transferee bank be deemed also to have taken over liability for the payment of retrenchment compensation in the event of their being retrenched while in the service of the transferee bank, on the basis that their service has been continuous and has not been interrupted by their transfer to the transferee bank.

(11) The transferee bank shall, on the expiry of a period not longer than three years from the date on which this scheme is sanctioned pay or grant to the employees of the transferor bank the same remuneration and the same terms and conditions of service as are applicable to the employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees of the transferor bank being the same as or equivalent to those of such other employees of the transferee bank:

Provided that if any doubt or difference arises as to whether the qualifications or experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank or as to the procedure or principles to be adopted for the fixation of the pay of the employees in the scales of pay of the transferee bank, the doubt or difference shall be referred to the Reserve Bank of India whose decision thereon shall be final.

(12) The trustees or administrators of any provident fund constituted for the employees of the transferor bank, or as the case may be, the transferor bank shall on or as soon as possible after the prescribed date transfer to the trustees of the employees provident fund constituted for the transferee bank, or otherwise as the transferee bank may direct, all the monies and investments held in trust for the benefit of the employees of the transferor bank:

Provided, however, that such latter trustees, shall not be liable for any deficiency in the value of investments, or in respect of any act, neglect, or default done before the prescribed date.

(13) The transferee bank shall submit to the Reserve Bank of India such statements and information as may be required by the Reserve Bank of India from time to time regarding the implementation of this scheme.

(14) Any notice or other communication required to be given by the transferee bank shall be considered to be duly given, if addressed and sent by prepaid ordinary post to the addressee at the address registered in the books of the transferor bank, until a new address is registered in the books of the transferee bank, and such notice shall be deemed to be served on the expiry of forty-eight hours after it has been posted. Any notice or communication which is of general interest shall be advertised in addition in one or more daily newspapers which may be in circulation at the place where the transferor bank was transacting its business.

(15) If any doubt arises in interpreting any of the provisions of this scheme, the matter shall be referred to the Reserve Bank of India and their opinion shall be conclusive and binding on both the transferee and transferor banks, and also on all the members, depositors and other creditors and employees of such of these banks and on any other person having any right or liability in relation to any of these banks.

(16) If any difficulty arises in giving effect to the provisions of this scheme, the Central Government may issue to the transferor and the transferee banks or to either of them such directions not inconsistent with this scheme as may appear to the Central Government, after consulting the Reserve Bank of India, to be necessary or appropriate for the purpose of removing the difficulty.

[No. F. 4(152)-BC/61.]

A. BAKSI, Jt. Secy.

